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K-TEC, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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| K-TEC, INC. , a Utah corporation, Plaintiff, vs. VITA-MIX CORP. , an Ohio corporation, Defendant. | MEMORANDUM OF COSTS SET FORTH IN PLAINTIFF'S PROPOSED BILL OF COSTS Civil Case No. 2:06-CV-108 Chief Judge Tena Campbell Magistrate Judge Paul M. Warner |
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Pursuant to Local Rule DUCivR 54-2(a), Plaintiff K-TEC, Inc. ("K-TEC") submits the following Memorandum of Costs Set Forth in Its Proposed Bill of Costs (Dkt. No. 789).

LEGAL BACKGROUND

Rule 54(d) of the Federal Rules of Civil Procedure provides that costs "should be allowed to the prevailing party." The United States Supreme Court has stated that Rule 54(d) should be interpreted to only allow taxed costs to reimburse a winning litigant for costs specifically

allowed by statute. *Farmer v. Arabian American Oil Co.*, 379 U.S. 227, 235 (1964). Taxable costs are specifically enumerated in 28 U.S.C. § 1920, which reads as follows:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

The statute has been interpreted in this Circuit and elsewhere as including both stenographic and video means of recording. *See Tilton v. Capital Cities/ABC, Inc.*, 115 F.3d 1471, 1478 (10th Cir. 1997) (“in most cases, a stenographic transcript of a videotaped deposition will be ‘necessarily obtained for use in the case’” as required by § 1920); *BDT Products, Inc. v. Lexmark Int’l, Inc.*, 405 F.3d 415, 419-20 (6th Cir. 2005) (approving *Tilton* and holding the district court did not abuse its discretion in awarding costs for transcripts plus “charges for video services, rough disc, interactive real-time, video tapes, and the synchronization of the video and deposition transcripts”); *Little v. Mitsubishi Motors North America, Inc.*, 514 F.3d 699, 701-02 (7th Cir. 2008) (given that Rule 30 does not now require a party to arrange for a transcript “at its own

expense” when the deposition is recorded by non-stenographic means, expenses for both can be taxed as costs).

Local Rules for the District of Utah state that the party entitled to recover costs should, in addition to submitting a bill of costs, submit a memorandum of its costs.

The memorandum of costs must (i) clearly and concisely itemize and describe the costs; (ii) set forth the statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and (iii) reference and include copies of applicable invoices, receipts, and disbursement instruments.

Local Rule DUCivR 54-2(a). K-TEC’s memorandum of costs is set forth below.

MEMORANDUM OF COSTS

I. FEES OF THE CLERK

K-TEC identifies the following costs it incurred, identified on its Bill of Costs as “Fees of the Clerk”:

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------|--|------------------------|------------------------|
| 02/06/06 | Filing Fee - Complaint 2:06cv108 | 28 U.S.C. § 1920(1) | \$250.00 |
| 04/07/06 | Filing Fee - Complaint 2:06cv294 | 28 U.S.C. § 1920(1) | \$250.00 |
| 06/04/07 | Filing Fee - Pro Hac Vice Application (Timothy P. Getzoff) | 28 U.S.C. § 1920(1) | \$15.00 |
| 10/16/07 | Filing Fee - Complaint 2:07cv785 | 28 U.S.C. § 1920(1) | \$350.00 |
| | | | Total: \$865.00 |

Supporting documentation is attached hereto as Exhibit A.

II. FEES FOR SERVICE OF SUMMONS AND SUBPOENA

K-TEC identifies the following costs it incurred, identified on its Bill of Costs as “Fees for service of summons and subpoena”:

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------|--------------------|------------------------|---------------|
|-------------|--------------------|------------------------|---------------|

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------|--|-------------------------|------------------------|
| 04/11/06 | Service of Summons on Vita-Mix | 28 U.S.C. § 1920(1),(3) | \$77.50 |
| 10/02/06 | Service of Subpoena on REDDOG Industries | 28 U.S.C. § 1920(1),(3) | \$50.00 |
| 10/30/06 | Service of Subpoena on Laszeray Technology, Inc. | 28 U.S.C. § 1920(1),(3) | \$82.20 |
| 03/29/07 | Service of Subpoena on Media Group | 28 U.S.C. § 1920(1),(3) | \$75.00 |
| 03/29/07 | Service of Subpoena on Burning Tree | 28 U.S.C. § 1920(1),(3) | \$75.00 |
| 03/29/07 | Service of Subpoena on Register.COM, Inc. | 28 U.S.C. § 1920(1),(3) | \$60.00 |
| 06/14/07 | Service of Subpoena on Gary Parker | 28 U.S.C. § 1920(1),(3) | \$55.00 |
| 10/18/07 | Service of Summons on Vita-Mix | 28 U.S.C. § 1920(1),(3) | \$67.50 |
| 03/31/08 | Service of Subpoena on Gary Parker | 28 U.S.C. § 1920(1),(3) | \$65.00 |
| 03/31/08 | Service of Subpoena on Brent Miller | 28 U.S.C. § 1920(1),(3) | \$50.00 |
| 05/26/10 | Service of Subpoena on Bintz Restaurant Supply | 28 U.S.C. § 1920(1),(3) | \$24.00 |
| | | | Total: \$681.20 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above summons and subpoenas are attached to this memorandum as Exhibit B.

III. FEES FOR TRANSCRIPTS

K-TEC identifies the following costs it incurred, identified in its Bill of Costs as “Fees for printed or electronically recorded transcripts necessarily obtained for use in the case”:

A. DEPOSITION REPORTER COSTS

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------|---------------------------|------------------------|---------------|
| 04/18/07 | Deposition of David Kolar | 28 U.S.C. § 1920(2) | \$1,655.26 |

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|----------|---|---------------------|---------------------------|
| 04/20/07 | Deposition of D. Scott Hinckley | 28 U.S.C. § 1920(2) | \$1417.32 |
| 08/11/09 | Deposition of Gary Parker | 28 U.S.C. § 1920(2) | \$719.80 |
| 08/12/09 | Deposition of Jonathan Katz | 28 U.S.C. § 1920(2) | \$1,142.00 |
| 09/22/09 | Deposition of Steve Quist | 28 U.S.C. § 1920(2) | \$945.25 |
| 09/23/09 | Deposition of B. Shawn Elgaeen | 28 U.S.C. § 1920(2) | \$786.74 |
| 09/29/09 | Deposition of Richard Galbraith | 28 U.S.C. § 1920(2) | \$642.49 |
| 11/10/09 | Deposition of Thomas D. Dickson Jr. | 28 U.S.C. § 1920(2) | \$695.86 |
| 11/11/09 | Depositions of George Wright and David Throckmorton | 28 U.S.C. § 1920(2) | \$613.85 |
| 12/03/09 | Depositions of Roger Brown and Frank Houser | 28 U.S.C. § 1920(2) | \$734.10 |
| 12/03/09 | Depositions of George Wright | 28 U.S.C. § 1920(2) | \$497.71 |
| 12/04/09 | Deposition of Richard Galbraith | 28 U.S.C. § 1920(2) | \$840.38 |
| 12/07/09 | Depositions of Richard Boozer and Brent Miller | 28 U.S.C. § 1920(2) | \$2,219.00 |
| 12/09/09 | Depositions of John Barnard and Jodi Berg | 28 U.S.C. § 1920(2) | \$2,681.00 |
| 12/17/09 | Deposition of Larry Gray | 28 U.S.C. § 1920(2) | \$402.34 |
| 12/29/09 | Depositions of David Barnard and Anthony Ciepiel | 28 U.S.C. § 1920(2) | \$1,647.50 |
| 02/26/10 | Deposition of Albert Karvelis | 28 U.S.C. § 1920(2) | \$1,051.50 |
| 03/01/10 | Deposition of Thomas Smegal | 28 U.S.C. § 1920(2) | \$554.44 |
| 03/03/10 | Deposition of Fred Smith | 28 U.S.C. § 1920(2) | \$1,094.36 |
| 03/04/10 | Deposition of Lance Gunderson | 28 U.S.C. § 1920(2) | \$1,202.38 |
| 03/19/10 | Deposition of Kevin Neels | 28 U.S.C. § 1920(2) | \$2,332.00 |
| 03/19/10 | Deposition of Lee Swanger | 28 U.S.C. § 1920(2) | \$1,840.00 |
| | | | Total: \$25,715.28 |

B. DEPOSITION VIDEOGRAPHER COSTS

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------|--|------------------------|---------------|
| 04/18/07 | Deposition of David Kolar | 28 U.S.C. § 1920(2) | \$1,509.26 |
| 04/20/07 | Deposition of D. Scott Hinckley | 28 U.S.C. § 1920(2) | \$1,188.70 |
| 08/03/09 | Deposition of Gary Parker | 28 U.S.C. § 1920(2) | \$890.00 |
| 08/12/09 | Deposition of Jonathan Katz | 28 U.S.C. § 1920(2) | \$857.00 |
| 08/13/09 | Photography and Video of Physical Inspection | 28 U.S.C. § 1920(2) | \$325.00 |
| 09/22/09 | Deposition of Steve Quist | 28 U.S.C. § 1920(2) | \$400.00 |
| 09/23/09 | Deposition of B. Shawn Elgaaen | 28 U.S.C. § 1920(2) | \$400.00 |
| 09/29/09 | Deposition of Richard Galbraith | 28 U.S.C. § 1920(2) | \$560.00 |
| 11/20/09 | Depositions of Thomas D. Dickson Jr., George Wright, David Throckmorton, Steve Quist, Shawn Elgaaen, and Richard Galbraith | 28 U.S.C. § 1920(2) | \$1,785.00 |
| 12/03/09 | Depositions of Roger Brown, Frank Houser, George Wright, and Richard Galbraith | 28 U.S.C. § 1920(2) | \$1,675.00 |
| 12/03/09 | Timestamping Hours for Various Depositions | 28 U.S.C. § 1920(2) | \$860.00 |
| 12/07/09 | Deposition of Richard Boozer | 28 U.S.C. § 1920(2) | \$958.25 |
| 12/08/09 | Deposition of Brent Miller | 28 U.S.C. § 1920(2) | \$1,079.50 |
| 12/09/09 | Deposition of John Barnard | 28 U.S.C. § 1920(2) | \$1,302.00 |
| 12/10/09 | Deposition of Jodi Berg | 28 U.S.C. § 1920(2) | \$954.50 |
| 12/16/09 | Deposition of David Barnard | 28 U.S.C. § 1920(2) | \$784.50 |
| 12/16/09 | Deposition of Anthony Ciepiel | 28 U.S.C. § 1920(2) | \$832.00 |
| 12/17/09 | Deposition of Larry Gray | 28 U.S.C. § 1920(2) | \$325.00 |
| 03/08/10 | Deposition of Kevin Neels | 28 U.S.C. § 1920(2) | \$953.75 |
| 03/09/10 | Deposition of Lee Swanger | 28 U.S.C. § 1920(2) | \$1,048.75 |
| 03/09/10 | Synchronizing Text to Video for Depositions of Kevin Neels and Lee Swanger | 28 U.S.C. § 1920(2) | \$993.75 |

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|----------|--|---------------------|---------------------------|
| 03/15/10 | Depositions of Thomas Smegal, Fred Smith, and Lance Gunderson | 28 U.S.C. § 1920(2) | \$1,120.00 |
| 04/22/10 | Timestamping Hours for Depositions of Thomas Smegal, Fred Smith, and Lance Gunderson | 28 U.S.C. § 1920(2) | \$815.00 |
| | Videographer Shipping Charges | 28 U.S.C. § 1920(2) | \$57.50 |
| | | | Total: \$21,674.46 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above deposition and videographer costs are attached to this memorandum as Exhibit C.

C. HEARING COURT REPORTER COSTS

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|----------------------|---|---------------------|--------------------------|
| 04/05/07 | Hearing – Motion to Stay | 28 U.S.C. § 1920(2) | \$33.70 |
| 05/15/07 | Hearing – Motion to Stay | 28 U.S.C. § 1920(2) | \$78.00 |
| 06/22/07 | Hearing – Miscellaneous | 28 U.S.C. § 1920(2) | \$171.60 |
| 06/28/07 | Hearing – Telephone Conference | 28 U.S.C. § 1920(2) | \$12.60 |
| 01/02/08 | Hearing – Status Conference | 28 U.S.C. § 1920(2) | \$58.20 |
| 02/15/08 02/20/08 | Hearing – Motion for Preliminary Injunction | 28 U.S.C. § 1920(2) | \$884.16 |
| 02/11/10 | Hearing – Summary Judgment Motions | 28 U.S.C. § 1920(2) | \$103.86 |
| 04/16/10 | Hearing – Summary Judgment Motions | 28 U.S.C. § 1920(2) | \$131.43 |
| 05/12/10 | Hearing – Summary Judgment Motions | 28 U.S.C. § 1920(2) | \$353.01 |
| 06/14/10 06/15/10 | Jury Instruction Conferences | 28 U.S.C. § 1920(2) | \$96.30 |
| | | | Total: \$1,922.86 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above transcripts are attached to this memorandum as Exhibits D.

D. TRIAL COURT REPORTER COSTS

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------------|--------------------|------------------------|--------------------------|
| 06/05/10-06/16/10 | Trial | 28 U.S.C. § 1920(2) | \$1,603.66 |
| 06/08/10-06/15/10 | Trial | 28 U.S.C. § 1920(2) | \$1,578.32 |
| | Trial | 28 U.S.C. § 1920(2) | \$722.37 |
| 06/07/10-06/17/10 | Trial | 28 U.S.C. § 1920(2) | \$2,588.19 |
| 06/15/10-06/17/10 | Trial | 28 U.S.C. § 1920(2) | \$586.77 |
| | | | Total: \$7,079.31 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above transcripts are attached to this memorandum as Exhibits E.

IV. FEES FOR WITNESSES

K-TEC identifies the following costs it incurred, identified in its Bill of Costs as “Fees for witnesses”:

| DATE | DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------|---------------------------|------------------------|------------------------|
| 09/25/06 | REDDOG Industries | 28 U.S.C. § 1920(3) | \$47.12 |
| 09/25/06 | Laszeray Technology, Inc. | 28 U.S.C. § 1920(3) | \$66.70 |
| 09/25/06 | Register.COM | 28 U.S.C. § 1920(3) | \$45.00 |
| 05/18/10 | David J. Barnard | 28 U.S.C. § 1920(3) | \$40.00 |
| 05/18/10 | Roger Brown | 28 U.S.C. § 1920(3) | \$44.00 |
| | | | Total: \$242.82 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above fees are attached to this memorandum as Exhibit F.

V. FEES OF COPYING

K-TEC identifies the following costs it incurred, identified in its Bill of Costs as “Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case”:

A. HOLLAND & HART COPIES

| DESCRIPTION | STATUTORY BASIS | AMOUNT |
|-------------------------------------|---------------------|---------------------------|
| Copies Made at Holland & Hart | 28 U.S.C. § 1920(4) | \$9,410.40 |
| Color Copies Made at Holland & Hart | 28 U.S.C. § 1920(4) | \$1,810.50 |
| | | Total: \$11,220.90 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above costs are attached to this memorandum as Exhibit G.

B. OUTSIDE VENDOR COPIES

Copies made by outside vendors due to capabilities or other exigencies:

| DESCRIPTION | STATUTORY BASIS | AMOUNT |
|---|---------------------|-------------|
| Copies and Color Copies Made at Salt Lake Legal | 28 U.S.C. § 1920(4) | \$20,717.03 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above costs are attached to this memorandum as Exhibit H.

C. DEMONSTRATIVE EXHIBITS

Demonstrative exhibits made by outside vendors:

| DESCRIPTION | STATUTORY BASIS | AMOUNT |
|---|---------------------|----------|
| Demonstratives Exhibits Made at Salt Lake Legal | 28 U.S.C. § 1920(4) | \$883.38 |

Copies of applicable invoices, receipts, and disbursement instruments associated with the above demonstrative exhibit costs are attached to this memorandum as Exhibit I.

CONCLUSION

K-TEC notes that it is not seeking costs associated with printing pursuant to 28 U.S.C. § 1920(4). A verification of the Bill of Costs as required by Local Rule DUCivR is included with the Bill itself. K-TEC respectfully requests that its taxable costs in the amount of \$91,002.24 be included in the judgment entered in the present case.

Dated this 16th day of July, 2010.

HOLLAND & HART LLP

/s/ Brett L. Foster

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Brett L. Foster

Mark A. Miller

Attorneys for Plaintiff

K-TEC, Inc.